

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 346 of 2010

BETWEEN : **TITUS (SALES) AGENCY LTD** a limited liability company having its registered office at 1st Floor Narseys Building, 2 Ellery Street, Suva in the Republic of Fiji Island.

FIRST PLAINTIFF

: **TITUS NARAYAN** of Dalton Place, Namadi Heights, Tamavua, Suva in the Republic of Fiji Islands, Real Estate Agent.

SECOND PLAINTIFF

AND : **INGE WEBER** of 45 Muicolo Road, NLTB subdivision Tamavua in the Republic of Fiji Island.

DEFENDANT

BEFORE : **Master Thushara Rajasinghe**

COUNSEL : **Ms. R. Naidu** for the Plaintiff
No appearance for the Defendant

Date of Hearing : **24th April, 2014**

Date of Ruling : **23rd September, 2014**

RULING

A. INTRODUCTION

1. This is a Summons filed by the Plaintiffs for the assessment of damages pursuant to the default judgment entered against the Defendant on the 23rd day of September 2013. The second Plaintiff filed an affidavit in support of this Summons for assessment of damages and gave evidence on oaths during the cause of the hearing. Having carefully considered

the affidavit in support and the evidence given by the 2nd Plaintiff, I now proceed to pronounce my ruling as follows.

2. The Plaintiff instituted this action by way of a writ of summons seeking following orders, against the Defendant inter alia that.
 - i. *Judgment in the sum of \$28,487.00 plus interest thereon at the rate of 12% from 1st of December 2010 to the date of judgment,*
 - ii. *Damages for breach of contract, defamation and injurious falsehood,*
 - iii. *Such further order or relief as may be deemed just by his honorable court may deem just, and*
 - iv. *Cost against the Defendant on an indemnity basis,*
3. Mr. Titus Narayan deposed in his affidavit that he was entitled to obtain a commission if this sale of the property proceeded as per the contract entered between the Plaintiff and the Defendant. He marked and tendered a copy of the said agreement as an annexure to his affidavit. He secured a buyer for a sum of \$420,000. It appears that he would have obtained a sum of \$28,487 as his commission, had that offer proceeded according to the contract.
4. Apart from that, the Plaintiff failed to provide any evidence to establish that he suffered any general damages due to the breach of contract, defamation and injurious falsehood by the Defendant. There is no specific evidence presented before me to determine how and the nature of the damages caused by this alleged breach of contract, defamation or injurious falsehood. The Plaintiff only stated that his reputation and good name in the business was affected by this alleged defamatory allegation by the Defendant. However, in view of the evidence presented by the Plaintiff, it appears that there is no evidence to prove how his reputation and good name in the business was affected due to these alleged acts of the Defendant. It is the onus of the Plaintiff to provide substantial evidence to prove the nature and the quantum of adverse effect on him due to the breach of contract and alleged defamation in order to establish his claim of general damages. In fact, the court is not in a position to prudently exercise its discretionary power of assessment of damages in the absence of such evidence. Under such circumstances, it is my opinion that

the Plaintiffs have failed to establish the amount of damages they have suffered due to the breach of contract, defamation and injurious falsehood by the Defendant. Circumstances such compel me to award only a nominal amount for the damages for breach of contract, defamation and injurious falsehood.

5. In my conclusion, I make following orders,

- i. The Plaintiff is awarded a sum of \$28,487.00 together with an interest at the rate of 12 % p.a from 1st day of December 2010 to the date of the Default Judgment,
- ii. The Plaintiff is awarded \$2,500 for the damages for breach of contract, defamation and injurious falsehood together with an interest at the rate of 5% p.a from the date of this order until the payment is made in full.
- iii. I award the Plaintiff a cost of \$1,500 assessed summarily.

Dated at **Suva** this **23rd** day of **September, 2014**.




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R.D.R. Thushara Rajasinghe
Master of High Court, Suva